

HOUSE BILL ANALYSIS

HB 2491

Brief Description: Providing a procedure to conduct DNA testing of evidence for persons sentenced to death or life imprisonment.

Sponsors: Representatives Schindler and Ballasiotes.

Hearing: January 26, 2000

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

BACKGROUND:

DNA evidence was first introduced into evidence in a United States court in 1986 and, after numerous court challenges, is now admitted in all United States jurisdictions. It has rapidly become an important forensic technique both for identifying perpetrators and for eliminating suspects when biological tissues such as saliva, skin, blood, hair, or semen are left at a crime scene. Because of technological developments that occurred in the 1990's, it is now possible to obtain conclusive results in cases where previous testing had been inconclusive. Two states, New York and Illinois, specifically authorize post-conviction DNA testing. These statutes permit an indigent inmate to obtain post-conviction DNA testing at state expense when certain evidentiary thresholds are met.

The Constitution, statutes, and court rules currently provide a framework for convicted defendants who have exhausted the appeals process to challenge a conviction by collateral attack. One mechanism of collateral attack is the writ of habeas corpus which a defendant may pursue in Washington courts by filing a personal restraint petition (PRP). Court rules establish the grounds for filing a PRP, including the following: (1) the convicting court lacked jurisdiction; (2) the conviction was obtained in violation of state law or the state or federal constitution; (3) material facts, not disclosed at trial, exist that in the interest of justice require the petitioner's release; (4) sufficient reasons exist to retroactively apply a post conviction change in the law; (5) there are "other grounds" for a collateral attack on the conviction; (6) the conditions or manner of the petitioner's

restraint violate the state or federal constitution; or (7) "other grounds" exist to challenge the legality of the confinement.

A prisoner under sentence of death who files a PRP is not entitled to discovery and/or investigative, expert, or other services as a matter of course, but must show good cause to believe that it will produce information that would support granting a PRP. Further, according to court rule (RAP 16.27), the Supreme Court may only grant a motion for investigative, expert, or other services if the Legislature has authorized and approved funding for such services.

In Washington, the crime of aggravated murder in the first degree carries a sentence of death or life without the possibility of release. In addition, persistent offenders « those committing three "most serious offenses" or two sex offenses as specified « are subject to life without possibility of release.

SUMMARY OF BILL:

A person sentenced to death or to life without the possibility of release may request the Department of Corrections to issue an order for testing of "any appropriate evidence available for testing which may be a reasonable basis for proving the person's innocence" if DNA test results were either not available when the person was convicted, or not allowed in the court where the conviction occurred.

The department must adopt rules to establish procedures for evaluating these requests, determining whether testing is appropriate, sharing the results of the tests with the offender's counsel, and determining when the department will pay for testing.

If a request for DNA testing is determined appropriate under the rules, the order for testing must be served on the law enforcement agency holding the evidence in question, who then has 20 days to petition in superior court to bar or postpone the testing. The order must inform the agency of this ability to petition and also notify the agency that if no petition is filed, the department will schedule the DNA testing and notify them, by regular mail, of the time and place where it will occur.

FISCAL NOTE: Requested on January 19, 2000.

EFFECTIVE DATE: Ninety days after adjournment of a session in which bill is passed.